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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

Austin W. DuRose, by and through his
Next Friends and Natural Parents, William
K. and Mindy E. DuRose, William K.
DuRose, and Mindy E. DuRose,

Case No. 13-CV-216-S

Plaintiffs,

vs.

Powell Valley Healthcare, Inc.; Powell
Hospital District No. 1; Powell Valley
Hospital; Jeffrey Hansen, M.D.; and John
Does 1 through 10,

Defendants.

SECOND MOTION TO INTERVENE

The State of Wyoming, through the Wyoming Attorney General's office and

Mackenzie Williams, Senior Assistant Attorney General, moves to intervene in the above-captioned matter. This Court previously denied the State's motion to intervene for failure to confer with Plaintiff's counsel prior to filing the motion pursuant to U.S.D.C.L.R. 77.1(b)(1)(a). Counsel for the State has conferred via telephone with Jon Moyers, Plaintiffs' counsel, who stated that he does not oppose the State's motion to intervene.

Rule 24(a)(1) of the Federal Rules of Civil Procedure requires the Court to allow a state agency to intervene where a federal statute gives an unconditional right to do so. Section 2403(b) of title 28 of the U.S. Code provides that a state may intervene as a matter of right in a matter before a court of the United States when "the constitutionality of any statute of that state affecting the public interest is drawn in question." In this case, Plaintiffs have, pursuant to U.S.D.C.L.R. 24.1, indicated on the civil cover sheet and alleged in their complaint that "any statutory cap on their recovery is violative of the Constitution of the State of Wyoming and thus unenforceable and invalid." Complaint ¶ 63. Plaintiffs appear to be referring to Wyoming Statute § 1-39-118(a)(i) and (ii), which limit damages in governmental claims cases. It is the State's position that these statutes are constitutional.

Accordingly, the State of Wyoming respectfully requests that the Court grant its renewed motion to intervene for the purpose of defending Wyoming statutes from Plaintiffs' claims of unconstitutionality. A proposed order is attached to this motion, and an electronic copy will be emailed to wyojudgesws@wyd.uscourts.gov.

Dated this 8th day of November, 2013.

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of November, 2013, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, District of Wyoming by using the CM/ECF system. I certify that all participants named below are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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